

Application No. 09/418,902

Docket No. HO-P01896US0

REMARKS

Applicants appreciate the Examiner's availability for a telephone Interview on August 26, 2003. Applicants believe that the Interview will facilitate the prosecution of the present case and that the parties are closer to resolving all issues currently outstanding.

Claims 1-18 and 54-72 are pending in the application. Claims 1-18, 54-60, and 68-72 are rejected 25 U.S.C. 112, 1st paragraph. Applicants respectfully traverse each of these rejections. Applicants submit that the specification is indeed enabling, and that the language of the claims is clear, especially in view of the Drawings (in addition to the Detailed Description). Nevertheless, applicants have amended the claims to further highlight their contribution to the art. Withdrawal of the 112 rejections is respectfully requested.

Secondly, Claims 1-18, 38 and 54-72 are rejected under 35 U.S.C. 103(a) as unpatentable over *Turner et al.* (U.S. 6,135,988). Applicants respectfully traverse each of these rejections.

Claim 1 recites a disposable absorbent article having, among other elements, a pair of end strips, each end strip being fixed, along a longitudinal direction, at a position intermediate the core and one of the end edges and extending between the side edges. The end strip includes at least three sections, each section being distinctly elastic and distinctly positioned relative to the other sections. A first section is recited as having generally elastic properties and laterally extending in generally parallel relation with the end edges. A second section is disposed longitudinally inward of the first section and extends in generally parallel relation therewith. The second section is further recited as being characterized in that the first section is substantially more elastic than the second section. A third section is also recited as being positioned longitudinally inward of said second section, said third section having an inward portion spaced away from said topsheet and said absorbent core.

Applicants respectfully maintain their position (as asserted in previous Responses) that structural limitations in claim 1 providing the relative positioning of the first, second, and third sections, and structural limitations concerning the elasticity of or relative elasticity of the first and second sections are not taught or suggested by *Turner* or any of the other cited references, individually or in some combination with *Turner*.

Application No. 09/418,902

Docket No. HO-P01896US0

In the Office action, it is suggested that FIG. 5 of *Turner* discloses a "first section" along the edge 43, a "second section" positioned below (in respect to FIG. 5) the "first section," and a "third section" centrally located and spaced away from the topsheet and the core (and having the adhesive areas 20). Applicants make note of the following distinctions between each of these three sections and their supposed corresponding parts as recited in the claims:

1. The "first section" does not correspond with the recited first section of claim 1 because it is not specified as having "generally elastic properties."
2. The "second section" does not correspond with the recited second section of claim 1 because the "first section" is not substantially more elastic than it. This is true because the "second section" is equipped with elastic strands 54 whereas the "first section" is not.
3. The "third section" does not correspond with the recited third section of claim 1 because it is not positioned longitudinally inward of the "second section." This "third section" appears, instead, to be aligned longitudinally with the "second section."

In summary, *Turner* does not teach or suggest such a combination of three sections wherein a first elastic section has generally elastic properties, and is substantially more elastic than a second section. *Turner* merely notes that the flap may include a layer of elastomeric material; it does not disclose the location of this layer on the flap. *Turner* also does not teach nor suggest how to integrate this elastic layer (or any elastic section for that matter) into the flap such that three distinctly elasticated and distinctly positioned sections are defined thereon, as required by claim 1. *Turner* also does not suggest the relative elasticity between any two sections of the flap, with or without the elastic layer, as required by claim 1.

Applicants respectfully note that item 54 in FIGS. 1 and 5 are elastic strands and not apertures (See Col. 9, lns. 54-59). These elastic strands are merely attached to the flap; they are not part of the flap nor provide a property of the material that forms the flap. In any event, the elastic strands cannot render that section substantially less elastic than any other section as suggested in the Office Action. Applicants further note that item 20 in FIG. 5 are adhesive areas and not apertures (See Col. 10, lns. 1-13). Thus, these adhesive areas 20 cannot render that section substantially less elastic than another section, as might be suggested.

Application No. 09/418,902

Docket No. HO-P01896US0

Further, *Turner* does not teach or suggest the position of the second section with respect to the first section and other parts of the disposable absorbent article, and does not teach or suggest the position of the third section with respect to the second and other parts of the disposable absorbent article, as required by claim 1. For example, *Turner* does not teach or suggest the combination of a first section specifically described as (having generally elastic properties) laterally extending in generally parallel relation with the end edges, and a second section (specifically characterized in that the first section is substantially more elastic than the second section) disposed longitudinally inward of the first section and extending in generally parallel relation therewith. Moreover, *Turner* does not teach or suggest a third section distinctly positioned relative to the second section (and thus relative to the first section) and the topsheet and absorbent core.

Applicants note further that the modifications to *Turner* which would be required in order to meet the limitations of claim 1 (i.e., creating three distinctly elastic and distinctly positioned sections of an end strip), do not advance any objective or purpose of the *Turner* absorbent article. In other words, there is no incentive, motivation, or suggestion to modify the *Turner* disposable absorbent article in the manner required by claim 1. Without such incentive, motivation or teaching, the *Turner* reference cannot provide the proper basis for a *prima facie* case of obviousness.

Accordingly, claim 1 and claims dependent from claim 1 are patentable over the cited prior art, and are in condition for allowance.

Claim 54 recites a disposable absorbent article having, among other elements, end strips having features similar to those of the end strip of claim 1. For any one of the reasons set forth above with respect to claim 1, claim 54 is also patentable over the cited prior art.

Claim 54 also recites the disposable absorbent article as having a pair of side walls, each side wall having oppositely disposed end portions, wherein one of the side walls extends generally longitudinally between the core and one of the side edges and the other side wall extends generally longitudinally between the core and the other side edge. The disposable absorbent article also includes a containment pocket disposed generally in the crotch region, and bounded by a substantially continuous sidewall disposed about the core and adapted to retain exudates received in the pocket. Finally, an inward section of the end strip is secured to end portions of the side walls

Application No. 09/418,902

Docket No. HO-P01896US0

such that the side walls are biased generally upward, and the inward section and the side walls substantially form the continuous sidewall of the containment pocket.

Applicants submit that the *Turner* reference does not teach or suggest, among other things, an inward section being specifically attached to a pair of side walls such that the side walls are biased generally upwardly. As discussed in Applicants' specification, this provides an advantageous structural feature that is part of the Applicants' unique contribution to the art. *Turner* also does not teach or suggest a substantially continuous sidewall or a containment pocket. In fact, it does not disclose any kind of detainment feature at the front waist edge of the diaper (40). Accordingly, claim 54, and each of dependent claims 55-60, contain additional patentable subject matter.

Independent claim 61 recites a disposable absorbent article having, among other elements, an end strip having three distinctly elastic and distinctly positioned sections. Thus, for reasons set forth above with respect to claim 1, claim 61 and dependent claims 62-67 are also patentable over the cited prior art.

Claim 61 further recites a containment pocket disposed generally in the crotch region and bounded by a substantially continuous peripheral wall including a pair of side walls which are biased generally upward. Because none of the cited prior art teaches or suggests such a containment pocket or peripheral wall, Applicants submit that claim 61 contains additional patentable subject matter.

The subject matter recited in claims dependent from claims 1, 54, and 61 have been discussed in the previous Responses. Applicants maintain their position that additional patentable subject matter is contained in these claims, and hereby incorporates those arguments provided previously in support of this position.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

Application No. 09/418,902

Docket No. HO-P01896US0

If the appropriate Petition for an Extension of Time is not attached hereto (or any other Petition required of the application), this statement shall serve as Applicants' Petition to the U.S.P.T.O. Please charge any fees that are due for any Petition or any fee required of this filing to the deposit account of Fulbright & Jaworski L.L.P., Account No. 06-2375 under Order No. P01896US0 (10209478).

The undersigned is available for consultation at any time, if the Examiner believes such consultation may expedite the resolution of any issues.

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Respectfully submitted,

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